




CITY OF HAMILTON
CITY MANAGER'S OFFICE
Digital, Innovation & Strategic Partnerships

TO:	Mayor and Members Sole Voting Member of the Hamilton Farmers' Market
COMMITTEE DATE:	November 23, 2020
SUBJECT/REPORT NO:	Hamilton Farmers' Market Governance Report (CM20010) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Matthew Grant 905-546-2424 Ext. 2739 Cyrus Tehrani 905-546-2424 Ext. 2261
SUBMITTED BY:	Cyrus Tehrani Chief Digital Officer City Manager's Office
SIGNATURE:	

RECOMMENDATIONS

That staff be directed to prepare a report that provides a preferred governance and operating model for the Hamilton Farmers' Market Corporation, which prioritizes value-for-dollar invested by the Shareholder, role clarity, enhanced governance and the avoidance of any potential conflicts of interest, with the support of an external consultant, at an approximate cost of \$50,000 - \$75,000 and report back to the Shareholder with funding source to be determined.

EXECUTIVE SUMMARY

Beginning in the fall of 2019, City staff undertook an evaluation of the current governance model of the Hamilton Farmers' Market Corporation ("HFMC"). The review was conducted on the fifth anniversary of implementing the HFMC's current governance model, which includes a board of directors made up of citizen and vendor directors and shareholder representation.

The review was initiated by City staff and was conducted by the 2WA Consulting Inc. It included reviewing board documentation (operating bylaws, agreements and minutes of open board meetings), interviewing board members, and research of the governance models of other farmers' markets. It is important to note that while an evaluation of a

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

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new governance model after five years is good management practice, a governance review would typically come at the Shareholder's request.

The review resulted in a report that recommended that the Shareholder:

- A. Create an advisory committee that will provide a vendor community perspective on operational issues
- B. Change the composition of the board to remove conflict of interest issues and build a customer-centric focus
- C. Establish a customer service / customer focused advisory committee to keep the Market in touch with consumer tastes
- D. Make the board of directors solely accountable to Council.
- E. Clearly outline board expectations of vendors
- F. Revitalize the board's governance principles
- G. Conduct a strategic visioning exercise that embraces a very different future for the Hamilton Farmers' Market

During the review development and consultation process, the composition of the board did not remain 100% consistent. Three board members resigned, including one member just before the review was started.

The HFMC board has indicated on numerous occasions that the current arrangement of cost-recovery services provided to them through the City is expensive and impacting their budgets. This year, the HFMC's budget will also be impacted by a 75% rent reduction the board provided to vendors as a result of the impacts of COVID-19. Though the intent of the HFMC board was to match the Canada Emergency Commercial Rent Assistance (CECRA) program, unfortunately the program was not available to the HFMC or market vendors because the Market Corporation operates within a municipal property. The board did seek approval from the sole voting member of the Hamilton Farmers' Market and chose to proceed with the rent reduction invoices prior to formal approval by the sole voting member.

Board members participated in the interviews conducted by 2WA Consulting, Inc. as part of the report preparation process, but also raised concerns about how the report was initiated.

In written feedback, board members stated that they believed the current review represents a missed opportunity as the HFMC board was not properly consulted in the review's design. The board also expressed that the review did not adequately assess the Market's fiscal capacity or its requirements to provide funds to City departments who provide the market services on a cost-recovery basis.

Alternatives for Consideration – See Page 8.

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: There may be additional cost incurred by the City in order to develop a recommendations report on a preferred governance and operating model via outside consultant. Based on other consultant engagements it is estimated that external consultant for review of larger governance and operating models including financials would be in the range of \$50,000 - \$75,000.

Staffing: At this time there are no staffing implications, but a future recommendations report on preferred governance and operating model may have staffing implications.

Legal: There are no anticipated legal cost above and beyond internal City staff within Legal Department support to review and amending, if/as required, the operating agreement or Market Corporation By-Law(s).

HISTORICAL BACKGROUND

General Overview

In December 2014, the City of Hamilton incorporated HFMC a not-for-profit entity, for the purpose of operating the Market.

The City is the sole voting member of the Hamilton Farmers' Market Corporation. The sole voting member:

- is responsible to elect or appoint the Board of Directors. The Board of Directors is in turn responsible to manage and direct the business affairs of HFMC;
- considers the annual operating and capital budget submissions, provided by HFMC, and has the authority to approve, or amend, the budget as they deem appropriate;
- reviews the Annual Report of the HFMC and holds the Annual General Meeting which includes the delivery and or update of strategic business plans;
- amends the Operating Agreement or corporate governance of HFMC as required.

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The board of directors is comprised of Councillor(s), citizens members, and vendor members. Based on the operating agreement, the board requires a minimum of seven (7) and a maximum of (13) board members or such other number of directors as may be determined from time-to-time by the sole voting member of the corporation.

As part of the operating agreement the City provides in-kind support services to the Market including services from Human Resources, Finance, and access to Legal Services. The City also provides IT and Facilities support on a cost-recovery basis.

The current board structure was put in place in 2015, following the work of a Farmers' Market Transition Sub-Committee, which examined how to help the Market become more independent and to reduce the level of taxpayer subsidy for market operations.

The subcommittee's work resulted in a new operating agreement that states:

- That the Market Corporation shall exist as a non-profit corporation in compliance with the Ontario Corporation's Act;
- That the General Manager of the Market shall be a City employee but will report to the board of directors;
- That the City act as the sole shareholder of the non-profit with the ability to appoint or elect all members of the Market's board of directors and terminate the agreement with 30 days' notice;
- That the Market Manager be given the delegated authority to manage the Market with the board maintaining the ability to monitor their performance to ensure governing policies are being adhered to; and,
- That the Market operate in a way that ensures directors operate free from conflicts of interest (including having vendor-directors avoid conversations about other stallholders) and in compliance with Ontario Municipal Act requirements pertaining to closed session meetings.

The Operating Agreement also lays objectives to support the establishment and operation of a farmers' market corporation for the purpose of:

- providing a venue for local food growers and producers to sell directly to the public;
- provide the public with access to high quality, nutritious, locally grown food;
- strengthening the local economy with the purchase of locally grown food wherever possible;
- promoting relationships and opportunities between farmers, food producers, independent food merchants, consumers and the public;
- offering a diversity of fresh food products, including international and speciality foods; and,
- fostering an economically, ecologically and socially sustainable community.

The HFMC Operating Agreement also includes several duties; one of which is that the goal of the Market Corporation is to reduce its dependencies on subsidies from the City, which has gone from \$258,929 in 2016 to \$295,989 in 2019, inclusive of the City's Levy funding and City-sourced sponsorship, which is currently set to expire in March of 2022.

Governance Review

In November of 2019, City staff engaged a consultant to review the current governance structure of the HFMC. The evaluation was undertaken in the context that it had been five years since the structure had been put in place.

After reviewing documentation related to the board (operating by-laws, agreements and Board minutes), interviewing board members, and researching other farmers' markets, the consultant, 2WA Consulting, Inc., produced a report. The report identified some areas of concern with the board's current operation and provided some recommendations that should be considered to address outstanding issues of concern.

The review took place from December 2019 to May 2020. Both the review process and the release of the final report were delayed due to COVID-19.

The final report, dated June 24, 2020, identified several concerns, including:

- that the current board is too heavily involved in operations, spends little time engaged in policy and does not closely follow its by-laws, including the excessive use of in-camera meetings;
- that board vendor representatives are in a conflict of interest and often want to focus on operations, as opposed to matters of policy;
- That the HFMC Manager is often overruled by board members on management decisions; and,
- that the leadership of the board is too focused on vendor concerns (cleanliness of the Market, parking etc.) than customer experience and the overall strategic direction of the Market.

The report also detailed several recommendations designed to improve the governance of the HFMC. Recommendations included:

- A. Create an advisory committee that will provide a vendor community perspective on operational issues
- B. Change the composition of the board to remove conflict of interest issues and build a customer-centric focus
- C. Establish a customer service / customer focused advisory committee to keep the Market in touch with consumer tastes

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- D. Make the board of directors solely accountable to Council
- E. Clearly outline board expectations of vendors
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The 2WA Consult's review of other markets (which did not include review of financial operation or City subsidies to the markets) in summary found the following in common from the markets reviewed.

1. an arm's length relationship exists where Council / the City administration stays out of the Market's day-to-day operations;
2. strong, independent management;
3. Boards (where they exist) play a minor role in the decision-making;
4. vendors do not play a significant role in the operations or decision-making;
5. there are formal and informal vehicles to understand the vendor perspectives;
6. an entrepreneurial spirit is encouraged;
7. a broad variety of goods and services are offered, that appeal to a broad cross-section of the population:
 - food both fresh and ready-made;
 - art instruction and sales;
 - theatre performance;
 - live entertainment;
 - antiques;
 - business services.

The 2WA Consultants Inc., report did not include scope of work to review financial performance of the Market and board members were not provided draft copies of the report for comment or review prior to the report being finalized.

A copy of the consultant's final report was provided to the HFMC Board Executive in late June 2020. A copy of the consultant's final report was provided to all voting HFMC board members on August 24, 2020 by the City.

The total cost for the consultation report to date is \$11,825 as these costs were fully paid for by the City.

The 2020 shareholder meeting included an in-camera sole shareholder discussion of a request from the Board of Directors for fee reductions for Hamilton Farmers' Market vendors during COVID-19 Pandemic.

The sole shareholder directed the HFMC board to officially submit a copy of the governance review to the sole shareholder. The report was forwarded to the sole

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shareholder on September 17, 2020. That same day, the board also submitted a resignation letter from citizen board member, Seth Waterman.

The 2WA Consultant presented the report and conducted a question and answer session at a special HFMC board meeting both with regards to the recommendations and details of the report on September 28, 2020.

The HFMC board held a special board meeting on October 26, 2020 to discuss the report and its recommendations. Subsequent to that meeting the HFMC board provided a response letter to 2WA Consultant and is included as Appendix "A". In their letter of response, board members indicated concern with the process and many of the recommendations.

Details of how each respective board member voted for the recommendations A through G in the 2WA Consultant's report is noted in Appendix "B" HFMC Board Meeting Draft Agenda Minutes for October 26, 2020.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

None.

RELEVANT CONSULTATION

City staff worked with 2WA Consultants, Inc., and the HFMC board to facilitate sharing of the governance report, arranging for 2WA Consultants, Inc. to answer HFMC board questions and summary or recommendations. Legal Services Division was consulted at the request of the HFMC Board Chair to confirm the report could be discussed publicly at HFMC board meetings. Corporate Services was consulted to provide the historical financial results of the Market.

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

The HFMC is a historical asset the City of Hamilton, which belongs to citizens through the municipality who acts as the Market's Sole Shareholder.

The HFMC board has seen three resignations in the past year. The board itself has expressed concern about the current operating model, particularly with the costs the HFMC is required to pay on a cost-recovery basis for the non-in-kind services provided by the City.

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The governance review as well as some recent changes to the board composition have highlighted some challenges that should be addressed to ensure the market can function in a way that is efficient and is consistent with the City's governance values. Challenges that should be addressed, include:

- potential conflicts of interest by having vendors with pecuniary interests in the operations of the Market involved in operational decisions that directly impact and/or benefit them as opposed to focusing on policy decisions. In other City-related governance structures, board members would likely be expected to recuse themselves from operational matters that impact their financial interests;
- the recent resignation of three board members;
- concerns related to role clarity of board members that have been identified in the review and by board members themselves;
- challenges with role clarity with board members, City staff and employees of the market itself;
- dissatisfaction with the current governance model expressed by members of the board as well as expectations of the sole shareholder in the operating agreement not being met.

In undertaking further analysis, focus should be paid to the goals of the sole shareholder for the Market, including ensuring that the Shareholder receives value for dollar for its investments into the Market and avoids real or perceived conflicts of interests, as would be expected of all City boards and committees and of Council itself.

Recommendation

That staff be directed to prepare a report that provides a preferred governance and operating model for the Hamilton Farmers' Market Corporation, which prioritizes value-for-dollar invested by the Shareholder, role clarity, enhanced governance and the avoidance of any potential conflicts of interest, with the support of an external consultant, at an approximate cost of \$50,000 - \$75,000 and report back to the Shareholder with funding source to be determined.

ALTERNATIVES FOR CONSIDERATION

That the sole shareholder approves the recommendations as provided by the 2WA Consultant's Report and direct the HFMC board to implement the recommendations.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

APPENDICES AND SCHEDULES ATTACHED

- Appendix “A” to Report CM20010: HFMC Board Response Letter to Governance Review Report 26-Oct-2020
- Appendix “B” to Report CM20010: HFMC Board Meeting Minutes 26-Oct-2020
- Appendix “C” to Report CM20010: HFMC Operating Agreement
- Appendix “D” to Report CM20010: HFMC Board Financials
- Appendix “E” to Report CM20010: HFMC Current Board Members and Terms